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February 15, 2012

**Ex Parte via Electronic Filing**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Basic Service Tier Encryption; Compatibility Between Cable  
Systems and Consumer Electronics Equipment,*  
MB Dkt. No. 11-169, PP Dkt. No. 00-67

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Dear Ms. Dortch:

On February 13, 2012, representatives of Boxee, Inc. ("Boxee") spoke with members of the Media Bureau staff via teleconference regarding the above-referenced rulemaking. In attendance were: Avner Ronen, Roe Vulkan, Melissa Marks and Nicholas Miller of Boxee, and William Lake, Michelle Carey, Nancy Murphy, Allison Neplokh, Mary Beth Murphy, Steven Broeckaert, John Gabrysch and Brendan Murray of the Media Bureau. The purpose of the teleconference was to further discuss whether a DLNA-based interface on cable set top boxes ("STBs") would address the competitive and consumer harms caused by permitting cable operators to encrypt basic tier cable.<sup>1</sup>

Boxee expressed that the question of adding a DLNA to STBs is distinct from the question of encrypting the basic tier, and the two proposals should not be reviewed as if they were linked. Boxee also emphasized that while a DLNA-based interface has the potential to increase device compatibility with cable programming, and therefore should be pursued, (a) it does not provide a remedy to the harms that would result from eliminating Clear QAM and (b) its efficacy will depend on details that have not yet been shared with Boxee. More specifically, even if encryption were made contingent upon STB support of DLNA:

- **Consumers will bear the cost of new STB rentals.** In addition to products from companies like Boxee, Hauppauge, SiliconDust, Simple.TV and Elgato, every TV made today includes a Clear QAM tuner. If the basic tier is

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<sup>1</sup> See Letter from Melissa Marks, General Counsel, Boxee, to Marlene H. Dortch, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Feb. 7, 2012) (the "Boxee Letter"). See also Letter from Mark Ely, President and CEO, Real Simple Software, Inc., to Marlene H. Dortch, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67 (Feb. 13, 2012) (the "Simple.tv Letter").

encrypted, consumers without OTA antenna reception will be forced to rent additional STBs from cable providers in order for those products to function. Adding DLNA-based functionality to those STBs in no way ameliorates the need to obtain them in the first place (either by cable truck roll or driving back and forth to a cable office location), the monthly rental cost of each such STB, or the frustration of consumers who would prefer to receive only the most basic programming with a simple STB-free connection.<sup>2</sup>

- **Consumers will bear the cost of obsolete and replacement devices.** Devices other than TVs that today use Clear QAM as an alternative where OTA reception is poor may not be compatible with a new STB, even one that complies with an open standard based on DLNA. Consumers will bear the cost of obsolete hardware and of purchasing new devices that may be developed to work with the new STBs, in addition to the rental costs the STBs themselves.
- **Encryption's net effect on consumers will be negative.** Adding DLNA to STBs may potentially remedy some of the lost compatibility caused by encryption, but it does not explain why such compatibility should be lost in the first place. The rule in question was adopted to increase compatibility of consumer devices with cable and foster competition in the market for such devices; it should not be amended unless the changes further those goals, or at least have a neutral net effect with respect thereto. The changes set forth in the NPRM benefit cable operators, not consumers.<sup>3</sup> Adding DLNA to STBs is unrelated to Clear QAM and does not stop the net effect of encryption from being harmful to consumers and competition.
- **The success of the DLNA-based standard will depend on as-yet unknown details.** Defining DLNA-based standards is not simple; any such standard must include specifications defining numerous processes and requirements.<sup>4</sup> How these elements are defined will determine if the STBs

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<sup>2</sup> See, e.g., Letter from Gregory Hephner, Hephner TV, to Marlene H. Dortch, FCC, MB Dkt. No. 11-169; PP Dkt. No. 00-67 (Feb. 10, 2012) ("A large segment of [retailer/installer's] customer base consists of those who are looking for simplicity" and "don't want to mess with another box or remote."). Since DLNA will require users to connect their STBs to their home networks (which most users don't do today), adding such an interface may introduce additional friction into the STB setup process. See also Letter from Peter Brody, Policy Analyst, Public Knowledge, to Marlene H. Dortch, FCC, MB Dkt. No. 11-169; PP Dkt. No. 00-67 (Feb. 14, 2012) and attachment thereto (providing 489 comments from members of the public urging the Commission to consider the harms to consumers caused by encryption of Clear QAM).

<sup>3</sup> See Letter from Melissa Marks, General Counsel, Boxee, Inc., to Marlene H. Dortch, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67, at 2-3 (Feb. 13, 2012); Letter from Ken Plotkin, CEO, Hauppauge Computer Works, Inc., to Marlene H. Dortch, FCC, MB Dkt. No. 11-169, PP Dkt. No. 00-67, at 2-3 (Feb. 14, 2012).

<sup>4</sup> Any standard would need to define well the following elements, for example: standard discovery of the service and its capabilities; the channel scan process, including how to initiate, the format and required metadata of the

with DLNA in practice enable device compatibility that is comparable to that of Clear QAM. At a minimum, the specifications must ensure that non-cable devices are able to access the broadcast channels without any need to obtain consent or certification of cable operators and must prevent operators from implementing the standard in ways that limit compatibility of compliant non-MVPD devices.<sup>5</sup>

Thus, while the Commission should pursue adding a DLNA-based interface to STBs, it should not link that action to the decision regarding basic tier encryption. Cable operators should not be permitted to encrypt the basic tier until they provide a comparable alternative to Clear QAM, such as direct IP delivery that does not require additional hardware rental or cable operators' consent in order to access the broadcast channels.

Pursuant to the Commission's rules, this notice is being filed in the above-referenced dockets for inclusion in the public record.

Respectfully Submitted,

/s/ Melissa Marks

Melissa Marks  
General Counsel

cc: William Lake  
Michelle Carey  
Nancy Murphy  
Allison Neplokh  
Mary Beth Murphy  
Steven Broeckaert  
John Gabrysch  
Brendan Murray

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response, and progress notifications; the process for tuning into a frequency; the process for filtering out only the relevant stream from the input (instead of broadcasting the entire frequency bandwidth); streaming essentials such as format, codecs and DRM; and signal strength and quality information.

<sup>5</sup> See also Boxee Letter at 2-3; Simple.tv Letter at 2.